

equipment in connection with the development and operation of projects. Upon adoption or modification, the IHA will promptly furnish a copy of these rules or regulations to HUD. These rules or regulations shall contain provisions on at least the following subjects:

- (i) Procedures to ensure that all procurement transactions are conducted in a full and open competitive manner, consistent with the standards of 24 CFR 85.36;
- (ii) Identification (by position title) of IHA officials authorized to enter into and approve contracts on a non-competitive basis as authorized by 24 CFR 85.36(d)(4);
- (iii) Procedures for inventory control;
- (iv) Procedures for storage and protection of goods and supplies;
- (v) Procedures for issuance of, or other disposition of, supplies and equipment;
- (vi) Procedures for implementing Indian preference requirements;
- (vii) Procedures for handling complaints and protests regarding procurement;
- (viii) Standards of conduct governing IHA directors, board members, officers, and employees; and
- (ix) Conflict of interest provisions governing directors, officers, employees, contractors/developers, and others doing business with the IHA.

(2) *Contract administration system.* An IHA shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

(c) *Government-wide contract requirements.* A HUD regulation found at 24 CFR part 85 embodies government-wide administrative requirements for grants to State, local, and federally recognized Indian tribal governments (including grants received by IHAs). The contract provisions listed in 24 CFR 85.36(i) of that regulation are to be included in any IHA contracts.

§ 950.165 Methods of procurement.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procure-

ment methods for securing services, supplies, or other property that do not cost more than \$100,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(b) *Procurement by sealed bids (Invitations for Bid (IFB)).* Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 950.165(b)(1) apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- (iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(c) *Procurement by competitive proposals (Request for Proposals (RFP)).* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is

generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) IHAs will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) IHAs may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, when price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms, even though they are a potential source to perform the proposed effort.

(d) *Procurement by noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or where after solicitation of a number of sources, competition is determined inadequate.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iii) HUD authorizes noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(2) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

§ 950.170 Other requirements applicable to development contracts.

(a) *Bonding requirements.* For construction contracts for more than \$100,000, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). In the case of a Mutual Help project, the term "total contract price" as used with respect to each of the above assurance methods includes the value of all Mutual Help contributions for work, materials, or equipment to be provided to the contractor for use in performing the contract work. The following methods may be used to provide performance and payment assurance:

(1) Performance and payment bonds for 100 percent of the total contract price;

(2) Deposit with the IHA of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(3) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the IHA, subject to reduction during the warranty period commensurate with potential risk;

(4) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the IHA subject to reduction during the warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(b) *Executive Order 11246 (equal employment opportunity).* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (3 CFR, 1964-65 Comp., p. 339), as amended by Executive Order 11375 (3 CFR, 1966-70 Comp., p. 684), and to applicable implementing regulations (24 CFR part 130; 41 CFR chapter 60), rules, and orders of HUD and the Office of Federal Contract